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MMB

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THEODORE AND LOIS KOZIOL,
24 Seagoin Road
Brick Town, NJ 08723

Plaintiffs

v.

THE UNITED STATES OF AMERICA
The Executive Office
Office of the Legal Adviser
Room 5519
United States Department of State
2201 C Street, NW
Washington, DC 20520-6310

Defendant

CIVIL ACTION

No. 07 3432

FILED

AUG 17 2007

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

COMPLAINT FOR INJUNCTIVE RELIEF

Parties

1. Plaintiffs, Theodore and Lois Koziol, are residents of the state of New Jersey residing at 24 Seagoin Road, Brick Town, New Jersey 08723. Plaintiffs are represented by The Wolk Law Firm, which is headquartered at 1710-12 Locust Street, Philadelphia, Pennsylvania. By and through their Philadelphia counsel, Plaintiffs submitted documents to the United States Department of State in an effort to effectuate service on the Austrian Defendant, Bombardier-Rotax GmbH, pursuant to rules governing service abroad.

2. Defendant, the United States Department of State, is an agency of the United States which has the authority to transmit a letter rogatory to the foreign officials in Austria for the purpose of effectuating service on an Austrian citizen. The Defendant agency has possession of records to which Plaintiffs seek access.

Jurisdiction

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B). Since this request was made by The Wolk Law Firm, as Plaintiffs' agent, which maintains a principal place of business in Philadelphia County, Philadelphia, venue is also appropriate to this forum pursuant to 5 U.S.C. §552(a)(4)(B).

Nature of the Action

4. This is an action brought under the Freedom of Information Act, 5 U.S.C. §552 (the "Act"), as amended, to enjoin Defendant to retrieve, review, and release the documents which Plaintiffs, by and through their Philadelphia counsel, requested from the Department of State, which are within its possession and control.

Background

5. Plaintiffs' Philadelphia counsel served the Defendant Department of State on April 13, 2007 a letter requesting access to certain documents under the Freedom of Information Act, 5 U.S.C. §552. (A copy of this letter is attached as Exhibit "A"). Plaintiffs' request sought records pertaining to service of process on the Austrian Defendant in the case *Koziol, et al. v. Bombardier-Rotax GmbH, Motorenfabrik, et al.*, No. 00-1938, United States District Court for the District of New Jersey, which were in the custody of the United States Embassy in Vienna, Austria.

6. By letter dated June 15, 2007, Defendant indicated that it has received this request, and would contact Plaintiffs' counsel when the material sought had been retrieved and reviewed. However, this letter does not indicate when the FOIA request would be processed, nor does it identify any "unusual circumstances" which would prevent Defendant from processing Plaintiffs' request.

7. Under the Freedom of Information Act, 5 U.S.C. §552(a)(6)(A)(i), Defendant shall determine whether to comply with the request, and notify the requester of the determination within twenty (20) business days from the date the request was received by the agency.

8. Under the Act, if the agency encounters “unusual” circumstances which require an extended period of time to process the request, the agency must provide the requester with written notice “setting forth the unusual circumstances for such an extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten days.” 5 U.S.C. §552(a)(6)(B)(i).

9. As of the date of the filing of this complaint, nearly two months after the statutorily mandated deadline has passed, Defendant has not processed Plaintiffs’ request, indicated any unusual circumstances for the delay, or indicated a projected date when Plaintiffs’ request will be processed.

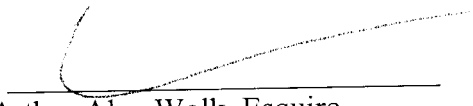
10. Section 552(a)(6)(C) of the Act states that “[a]ny person making a request to any agency for records ... shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.”

11. Plaintiffs have exhausted the administrative remedies provided by the Freedom of Information Act and agency regulations.

WHEREFORE, Plaintiffs pray this Court:

1. To order Defendant to process, request, and permit Plaintiffs access to the requested documents; and
2. To grant such other and further relief as the Court may deem just and proper.
3. To allow the issuance of a subpoena on the Embassy of the country of Austria to obtain the responsive records.

Dated: August 17, 2007



Arthur Alan Wolk, Esquire
THE WOLK LAW FIRM
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Philadelphia, PA 19103
(215) 545-4220
Attorneys for Plaintiffs

-----Original Message-----

From: FOIA Request [mailto:FOIA@state.gov]
Sent: Friday, April 13, 2007 5:00 PM
To: Cheryl DeLisle
Subject: FOIA Request Letter B5142

Thank you for filing your FOIA request online on 4/13/2007. The process for completing your request will now begin. Here is a review of your request.

I am willing to pay \$500 for my request.

I am affiliated with a private corporation and am seeking information for use in the company's business.

The time period of my request is from 1/1/1999 to the present.

The records I request can be described as follows:

(1) All documents, correspondence, and any other record of a transaction related to the service of process on the following in relation to the case of Koziol, et al. v. Bombardier-Rotax GmbH, Motorenfabrik, et al., No. 00-1938, United States District Court for the District of New Jersey:

Mr. Hans Goacin Lucai, Director
Bombardier-Rotax GmbH
Motoren Fabrik
A-4623 Gunskirchen, AUSTRIA

Bombardier-Rotax GmbH
Motoren Fabrik
A-4623 Gunskirchen, AUSTRIA

BRP-ROTAX GmbH & CO. KG, a/k/a, d/b/a, and/or
f/k/a BOMBARDIER-ROTAX GmbH & CO. KG,
BOMBARDIER-ROTAX GmbH & CO. and/or
BOMBARDIER-ROTAX GmbH, Individually,
and as a Joint Venturer,
Postfach 5, Wesler Str. 32, A-4623
Gunskirchen, Austria

(2) All documents, correspondence, and any other record of a transaction related to the service of process in the case of Koziol, et al. v. Bombardier-Rotax GmbH, Motorenfabrik, et al., No. 00-1938, United States District Court for the District of New Jersey, which was sent to the United States Embassy in Vienna for service of process.

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Reference Number: B5142